IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEY CRISOSTOMO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No: 1:16-cv-6406
	)	
TRACEY L. SCHNEIDER-KIDAN and ADAM KIDAN	)	Honorable John Z. Lee
	)	
Defendants.	)	

DEFENDANTS TRACY L. SCHNEIDER-KIDAN AND ADAM KIDAN'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO RULE 12(b)(2) & 12(b)(6)

Defendants Tracy L. Schneider-Kidan, and Adam Kidan (collectively, Defendants), by and through their undersigned attorneys, move the Court to dismiss Plaintiff Josey Crisostomo's First Amended Complaint (the "Amended Complaint") for lack of personal jurisdiction pursuant to Rule 12(b)(2) and failure to state a claim pursuant to Rule 12(b)(6). In support of this motion, Defendants state as follows:

1. Plaintiff is a former employee of Chartwell Staffing Services, Inc. d/b/a Chartwell Staffing Solutions ("Chartwell"). On April 20, 2015, Plaintiff signed an Employment Agreement with Chartwell. (Amend. Compl. at ¶ 8, Ex. A, Empl. Agmt.)

2. On September 30, 2016, Plaintiff filed his Amended Complaint asserting that Defendants violated the Illinois Wage Payment & Collection Act ("IWPCA"). 820 ILCS 115/1, *et seq.* In Count I, Plaintiff asserts that Defendants violated the IWPCA by failing to pay the Plaintiff "commissions" and "profit sharing" pursuant to the terms of his Employment Agreement. (Compl. at ¶ 18.) In Count II, Plaintiff asserts that Defendants unlawfully terminated his employment in

retaliation for complaining about the purportedly unpaid commissions in violation of the IWPCA. 820 ILCS 115/14(c).

3. The Court should dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(2) because Defendants are not subject to personal jurisdiction in Illinois based on the fiduciary-shield doctrine. Alternatively, Plaintiff's claims against Schneider-Kidan should be dismissed under Rule 12(b)(2) because Plaintiff fails to allege that Schneider-Kidan has sufficient minimum contacts with the state of Illinois to be subject to personal jurisdiction.

4. The Court also should dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) because the IWPCA only applies to Illinois employers and Defendants are not citizens, residents or otherwise located in Illinois. Plaintiff also fails to state a claim against Schneider-Kidan because the Amended Complaint fails to allege that she is Plaintiff's "employer" as defined by the IWPCA or that she knowingly permitted Chartwell to violate the IWPCA.

5. Defendants are contemporaneously filing a Memorandum in support of this motion, which they incorporate by reference herein.

WHEREFORE, Defendants Tracy L. Schneider-Kidan and Adam Kidan hereby move this Court for the entry of an order dismissing Plaintiff Josey Crisostomo's First Amended Complaint for lack of personal jurisdiction and failure to state a claim pursuant to Rule 12(b)(2) & 12(b)(6), and granting such other relief as the Court deems equitable and just.

Respectfully submitted,

TRACY L. SCHNEIDER-KIDAN and
ADAM KIDAN

By: */s/ Matthew P. Tyrrell*
One of Their Attorneys

Daniel E. Beederman
William R. Klein
Matthew P. Tyrrell
SCHOENBERG FINKEL NEWMAN & ROSENBERG, LLC
222 S. Riverside Plaza, Suite 2100
Chicago, IL 60606
(312) 648-2300 – telephone